

# **EXHIBIT Q**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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CAIR Foundation, Inc., doing	)	File No. 21-cv-1267
business as Council on	)	(SRN/TNL)
American-Islamic Relations,	)	
doing business as CAIR,	)	
	)	Saint Paul, Minnesota
Plaintiff,	)	December 13, 2021
	)	9:30 a.m.
vs.	)	
	)	Zoom for Government
Asma Lori Haidri Saroya,	)	Videoconference
	)	
Defendant.	)	
	)	

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BEFORE THE HONORABLE SUSAN RICHARD NELSON  
UNITED STATES DISTRICT COURT JUDGE  
**(MOTIONS HEARING)**

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5 Proceedings recorded by mechanical stenography;  
6 transcript produced by computer.  
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**P R O C E E D I N G S**

**VIA ZOOM FOR GOVERNMENT VIDEO TELECONFERENCE**

THE COURT: We are here today in the matter of CAIR Foundation, Inc., doing business as the Council on American-Islamic Relations and CAIR, versus Asma Lori Haidri-Saroya, and I'm sure I have not pronounced that correctly. I apologize to the defense. This is civil file number 21-1267. Let's take appearances, please, and we'll begin with the plaintiff.

MS. MORGAN: Good morning, Your Honor. Cindy Morgan, and that's my colleague Mr. Fortunato. And here on the line as well, but not on video, is Carl Christensen from Christensen Law who is our local counsel in Minnesota.

THE COURT: Very good. Good morning.

And for the defense, please.

MR. BAUDRY: Good morning, Your Honor. Alain Baudry and Steven Kerbaugh; and I think she's not on the video screen, Kelsey Marron from Saul Ewing for the Defendant, and Mr. Kerbaugh will be handling the oral argument this morning.

THE COURT: Very good. Can you tell me how to correctly pronounce the defendant's name, please?

MR. BAUDRY: It's Lori Saroya.

THE COURT: Saroya. There we go. All right.

1 Thank you very much. And, yes, I actually see Kelsey Marron  
2 on the little screen, so she's there.

3 MR. BAUDRY: Great.

4 THE COURT: We are here today to consider the  
5 defendant's motion for partial judgment on the pleadings.  
6 Who wishes to be heard?

7 MR. KERBAUGH: Your Honor, Steve Kerbaugh from  
8 Saul Ewing on behalf of Defendant Lori Saroya who is also  
9 with us today in the virtual courtroom.

10 And, Your Honor, I've prepared a PowerPoint  
11 presentation to help guide today's discussion. If it  
12 pleases the Court, I will go ahead and pull that up right  
13 now.

14 THE COURT: Sure. And I have a copy of it, too.  
15 Go ahead.

16 MR. KERBAUGH: Okay. Your Honor, by this motion  
17 Ms. Saroya seeks dismissal of Counts I, II, II and V of  
18 Plaintiff CAIR Foundation, Inc.'s complaint, particularly  
19 CAIR's defamation claims. Counts I and II fail to state a  
20 claim on which relief can be granted because, one, they are  
21 time barred to the extent that they are based on statements  
22 made before May 21st, 2019; two, they are based on  
23 non-actionable statements of opinion or hyperbole; and,  
24 three, CAIR has failed to specifically identify the alleged  
25 inflammatory statements.

1 CAIR's tortious interference claim, Count III,  
2 fails for all of the same reasons because tortious  
3 interference claims that are premised entirely on unviable  
4 defamation claims likewise fail as a matter of law.

5 Furthermore, CAIR has failed to adequately plead a  
6 tortious interference claim under Minnesota law, and the  
7 causation of the damages elements are the particularly  
8 problematic ones in this context.

9 Finally, CAIR's claim for injunctive relief, Count  
10 V, fails because injunctive relief is not a cause of action;  
11 it's a remedy. But more fundamentally, CAIR's injunction  
12 claim seeks what in essence would be an unconstitutional  
13 prior restraint.

14 With regard to the statute of limitations, as the  
15 Court well knows, it's a two-year statute for defamation  
16 claims under Minnesota. Pursuant to the *Wild versus Rarig*  
17 case, it's also a two-year statute of limitations for  
18 tortious interference when the tortious interference claim  
19 is premised on a defamation claim.

20 The complaint in this matter was filed on May 21st  
21 of 2021, so claims based on statements prior to May 21st,  
22 2019, two years before, are not viable. Paragraphs 59  
23 through 94 of the complaint relate entirely to statements  
24 made prior to May 21st, 2019, and CAIR tacitly admits that  
25 these claims are time barred in its complaint by focusing on

1 the statements that were made after May 21st, 2019.

2 There's simply no reason for CAIR to have included  
3 the allegations contained in paragraphs 54 through 94 of the  
4 complaint in the complaint, thus forcing Ms. Saroya to  
5 defend herself against those allegations. And Ms. Saroya  
6 respectfully requests that Court dismiss the claims to the  
7 extent that they are premised on them.

8 With regard to nonactionable statements, it is  
9 axiomatic under Minnesota law that only statements that  
10 imply the existence of fact that can be proven as true or  
11 false are actionable. Statements of opinion are subject to  
12 the full protection of the First Amendment. This includes  
13 statements relating to subjective views, interpretations,  
14 theories, conjecture, surmise, mere vituperation or abuse,  
15 or a rhetorical hyperbole, none of which are actionable in a  
16 defamation action. Claims based on nonactionable opinion  
17 are subject to dismissal as a matter of law.

18 In Ms. Saroya's briefing, the Court will see  
19 examples of numerous cases in which courts have determined  
20 that statements are nonactionable as a matter of law. This  
21 slide points to a couple. The *Others First, Inc. versus*  
22 *Better Business Bureau of Great St. Louis* case from the  
23 Eighth Circuit relating to a statement warning consumers to  
24 exercise caution when dealing with a charity, comparable to  
25 the statements at issue here.

1           The *Alexander versus Strong* case relating to  
2           statements that a plaintiff and his wife were bad and  
3           dangerous people were deemed to be inherently subjective  
4           statements and, thus, not actionable. *Fredin versus*  
5           *Clysdale; Clysdale*, similarly, a social media posting  
6           implying that the plaintiff posed a risk to women's safety  
7           was deemed a nonactionable opinion.

8           And there are numerous others in the reply brief.  
9           For example, the *Geraci versus Eckankar* case, which included  
10          statements relating to, for example, poisoning the board or  
11          the party being out of control. Those were nonactionable.

12          *Northland Merchandisers versus Menard* relating to  
13          a conflict of interest, terrible ethics, likewise deemed  
14          nonactionable, and the list goes on and on.

15          CAIR's complaint is replete with these types of  
16          nonactionable statements, and here is but one example. This  
17          is an example from paragraph 107 of the complaint, and you  
18          can see from the parallel citation on this particular slide,  
19          it also appears in various other forms at paragraphs 82, 92,  
20          116, and the list goes on.

21          But in this statement Ms. Saroya said: "I worked  
22          with CAIR in various capacities for 11 years, and I'm  
23          convinced that CAIR creates more victims than it helps. It  
24          does more harm than good. Whether it's the continuous  
25          negative portrayal of Muslims as victims in the media, lack

1 of strategy, making serious mistakes on people's cases,  
2 providing inconsistent services, the all-male press  
3 conferences, failure to build a legitimate nationwide  
4 infrastructure, lack of community engagement on the national  
5 level," and so on and so forth. And these are all  
6 statements of Ms. Saroya's opinion regarding her experiences  
7 at CAIR and her perception that the organization does more  
8 harm than help.

9 Moreover, whether CAIR negatively portrays Muslims  
10 in the media, lacks strategy, makes mistakes in people's  
11 cases, lacks community engagement and so forth, are all  
12 inherently subjective issues on which reasonable minds could  
13 differ; not verifiable fact.

14 And I note that it's but one example of such  
15 statements in Ms. Saroya's opening brief at pages 9 through  
16 12. There are many others. And to the extent that CAIR's  
17 claims are based on such statements that are not objectively  
18 verifiable as true or false, or they're rhetorical  
19 hyperbole, or they're an expression of Ms. Saroya's views  
20 and not reasonably understood otherwise, they cannot serve  
21 as a basis for a defamation claim.

22 Moving forward to the context in which these  
23 statements were made as well, CAIR's defamation claims fail  
24 because they are based on lengthy statements which are laden  
25 with opinion. The entirety of these communications need to

1 be taken into account when considering whether any  
2 particular statement contained therein could arguably  
3 construe as a factual connotation. And in light of the  
4 context of the broader statements, the Court should read  
5 them for what they are. Statements of subjective belief,  
6 rhetorical hyperbole and vituperation, which were posted in  
7 online forums where one would, you know, particularly expect  
8 to see statements of opinion.

9 But even taking the pleadings in the light most  
10 favorable to CAIR, it has failed to specifically identify  
11 the alleged defamatory statements. Minnesota courts  
12 repeatedly conclude that defamation claims based on lengthy  
13 communications, based principally on opinion, must be  
14 dismissed where the plaintiff does not adequately identify  
15 what portions of them are false and thus allegedly  
16 actionable.

17 And we've cited, for example, the *Clancy versus*  
18 *Vacationaire Estates* case, *Smith v. Britton* as some examples  
19 in the brief. But that's exactly what CAIR has done here.  
20 Its allegations are based on lengthy online posts or e-mails  
21 or comments to newspaper articles or other Internet content  
22 that are laden with opinion, and then CAIR cursorily alleges  
23 that the entirety of those lengthy communications are false.

24 And here's an example that is drawn from paragraph  
25 82 of the complaint, and this is a two-slide quotation and

1 this is not, by far, the longest statement that CAIR is  
2 alleging is the basis for its defamation claim. But I just  
3 wanted to put this up here and I'll give the Court a brief,  
4 you know, moment here to read it. I won't read it to you,  
5 but I did want to focus on just a couple of aspects of this  
6 particular post.

7 Notably, the context for this entire post, the  
8 statement that kind of sets the tone for it, is an opening  
9 couple of sentences whereby Ms. Saroya indicates that it was  
10 empowering for her to leave her job at CAIR and all of the  
11 dysfunction and abuse at that job. This is a statement of  
12 her personal feelings upon leaving her position. It could  
13 not be viewed as anything other than a statement of  
14 Ms. Saroya's subjective beliefs.

15 Reading through this statement, Ms. Saroya also  
16 starts to talk about, you know, being diligent and doing  
17 your research and asking tough questions when considering  
18 nonprofit support and donations. This is the second portion  
19 of paragraph 82 of the complaint. It's a list of rhetorical  
20 questions, and these questions don't purport to be factual  
21 statements. To the extent any factual implication could be  
22 drawn from these statements, again, it would be a function  
23 of Ms. Saroya's subjective belief.

24 It is clear that this post is replete with opinion  
25 and rhetoric. And rather than identify what portions of

1 this statement CAIR claims are untrue, it alleged in  
2 paragraph 83 that, and I'm quoting: "At the time that  
3 Saroya published the above statement, she knew the  
4 allegations contained therein were false or made with  
5 reckless disregard for their truth or falsity," thus  
6 suggesting that this entire paragraph forms the basis for  
7 CAIR's defamation claim. Since CAIR has failed in its  
8 complaint to adequately identify what statements that it has  
9 quoted it believes are true and thus -- or false, and thus  
10 actionable, the Court should dismiss CAIR's defamation  
11 claims.

12 Moving forward to tortious interference with  
13 business relations. As a preliminary matter, CAIR's  
14 tortious interference claim is premised entirely on its  
15 defamation claims. And when defamation claims fail, the  
16 tortious interference claims that are entirely premised on  
17 them also fail as a matter of law. There's a number of  
18 cases that stand for this proposition, including the  
19 *European Roasterie* case which you see here.

20 This tortious interference claim also fails from  
21 another defect and this is that it has failed to plead a  
22 fundamental element of its claim, and that's that Ms. Saroya  
23 caused CAIR damages. Under Minnesota law, this requires  
24 pleading facts that specifically identify at least one  
25 third party or third parties that the defendant induced or

1 otherwise caused not to enter into a relationship with the  
2 plaintiff. CAIR's complaint contains no such allegations of  
3 any purported lost donors, partners, or religious leaders as  
4 a result of Ms. Saroya's statements. Therefore, CAIR's  
5 claim fails because of the fundamental pleading defect.

6 And finally, Your Honor, I want to briefly discuss  
7 injunctive relief. As a preliminary matter, you know,  
8 injunctive relief is a remedy. It's not a cause of action.  
9 The purported injunctive relief claim should be dismissed on  
10 that basis alone.

11 But the more fundamental flaw in CAIR's claim for  
12 injunctive relief is that it seeks from this Court an order  
13 that would be violative of Ms. Saroya's First Amendment  
14 right to free speech. As the Supreme Court has held, the  
15 First Amendment forbids any branch of the government, which  
16 includes the judiciary, from dictating what we see or read  
17 or speak or hear. Such an action is an impermissible prior  
18 restraint, which restraints the Supreme Court has held are  
19 the most serious and least tolerable form of encroachment on  
20 First Amendment rights.

21 Now, that's not to say that there can never be a  
22 prior restraint, but such orders need to be central to the  
23 needs of public order, and when those -- can only be issued  
24 when those needs cannot be achieved through less restrictive  
25 means.

1 Injunctions like the one CAIR is seeking here  
2 would be, according to the Court in *Sindi vs. El Moslimany*  
3 issued by the First Circuit, a very well reasoned and recent  
4 case, a dynamic example of a prior restraint. I think the  
5 breadth of the prior restraint that CAIR seeks here is  
6 staggering. CAIR seeks an order that Ms. Saroya cease and  
7 desist from any further defamation of CAIR in any forum on  
8 any platform. This extends to future statements? Surely.  
9 By its plain terms, this would also extend to statements  
10 that have not even been adjudicated as defamatory after a  
11 trial on the merits.

12 And as the First Circuit recently and persuasively  
13 concluded in the *Sindi* case, even a prohibition on  
14 statements that have previously been found to be defamatory  
15 at trial can constitute an overbroad prior restraint that is  
16 in violation of the First Amendment. And the reason for  
17 that is clear and it makes just a lot of sense and that's  
18 that when one utters a statement in one context, it doesn't  
19 necessarily mean it wouldn't be true or spoken without  
20 malice on another.

21 Defamation is an inherently contextual tort. And  
22 by its very broad, you know, request for injunctive relief  
23 seeking an order that bars Ms. Saroya from defamation, you  
24 know, whatever that means to CAIR, CAIR seeks to muzzle  
25 Ms. Saroya and chill her willingness and ability to discuss

1 her experiences at CAIR simply because it does not want the  
2 exposure. But CAIR cannot be allowed to so trample on  
3 Ms. Saroya's First Amendments rights.

4 Moreover, an injunction of the type that CAIR is  
5 suggesting relating to the type of statements that CAIR  
6 claims are actionable here, for example, relating to  
7 harassment, discrimination and so forth, would be  
8 particularly insidious given its chilling effect on whistle  
9 blowers and on complaints relating to wrongful and  
10 potentially unlawful conduct. For that reason, CAIR's  
11 injunctive relief claim is overbroad and should be  
12 dismissed.

13 And, Your Honor, for all of these reasons, and  
14 those discussed in the briefing, Ms. Saroya respectfully  
15 requests that the Court dismiss Counts I, II and III and V  
16 of CAIR's complaint. And I'm happy to answer any questions  
17 that the Court may have for me. Otherwise, I'll pass the  
18 proverbial podium.

19 THE COURT: Thank you very much, Mr. Kerbaugh.  
20 Perhaps you can take us off of your shared screen.

21 MR. KERBAUGH: Absolutely.

22 THE COURT: Very good.

23 All right. Who wishes to be heard for CAIR?

24 MS. MORGAN: I will, Your Honor. Cindy Morgan on  
25 behalf of CAIR.

1 THE COURT: Very good.

2 MS. MORGAN: Thank you. Good morning, Your Honor.

3 Saroya's motion for judgment on the pleadings is  
4 the wrong tool for the wrong job. She seeks to prematurely  
5 and permanently bar CAIR from recovery based on incorrect  
6 legal standards and case law that even with just a cursory  
7 review has no plausible applicability to the issues at hand.

8 Her attempts to stifle CAIR well before the close  
9 of discovery, and it has no basis in fact. CAIR's complaint  
10 charges Saroya with only five causes of action, four of  
11 which are at issue in this motion. Because each count is  
12 well pleaded and falls within the applicable statutes of  
13 limitations, Saroya's motion must fail and we respectfully  
14 request that it be denied in its entirety.

15 The questions for Your Honor to decide here today  
16 are really quite simple. It's whether CAIR has pleaded at  
17 least one statement capable of defamatory meaning within the  
18 applicable statute of limitations and whether CAIR has put  
19 Saroya on notice of its defamation, tortious interference  
20 and injunctive relief claim. If the answers to those two  
21 questions are yes, which we submit, Your Honor, that they  
22 are, then CAIR's complaint survives in its entirety and  
23 Saroya's motion fails.

24 Notably and tellingly, Your Honor, Saroya doesn't  
25 argue that CAIR did not plead any communications within the

1 applicable SOL, which would be post May 21st of 2019; nor  
2 does she argue that CAIR didn't plead any actionable  
3 statements of fact. Instead she admits that CAIR pleaded  
4 communications containing statements of fact capable of  
5 defamatory meaning within the past two years of when it  
6 filed its complaint. So even Ms. Saroya agrees that CAIR  
7 pleaded actionable claims here.

8           Instead of using a 12(c) motion for its intended  
9 purpose, she appears to be using it almost akin to a motion  
10 to strike. She appears to be asking this Court to strike  
11 certain numbered paragraphs from the complaint that place  
12 her in a bad light. And it's understandable that she  
13 wouldn't want a jury to see the extent of her intent to harm  
14 CAIR or to be able to put her more recent publications and  
15 statements in their full context within the breadth of her  
16 history of defamatory communications.

17           And, you know, we understand the desire to want to  
18 wash these allegations from the complaint because they prove  
19 without a doubt her malicious intent to destroy an entire  
20 nonprofit organization, but a motion for a judgment on the  
21 pleadings is not the correct mechanism to accomplish this  
22 task. She can't parse out the pleadings simply to benefit  
23 her.

24           The standard for Your Honor's decision here is  
25 well-known, but I think it bears repeating here today

1 because it's a burden that's almost entirely ignored by  
2 Ms. Saroya in her motion and in her argument here.

3 Because granting a 12(c) motion summarily  
4 extinguishes litigation at the threshold because it  
5 forecloses CAIR from the opportunity for discovery and for  
6 factual presentations, courts have to treat these motions  
7 with the greatest of care. They cannot be granted except in  
8 the most unusual and rare circumstances where the plaintiff  
9 includes allegations on the face of the complaint that show  
10 that there's some insuperable bar to relief. Meaning that  
11 to grant CAIR's motion here, Your Honor would have to find  
12 that all of CAIR's pleaded defamatory statements are outside  
13 the statute of limitations and that none of them are capable  
14 of defamatory meaning. It's an exceptionally high burden  
15 and it's not met here.

16 I know Your Honor has read the briefings and is  
17 familiar with the pleadings. I want to keep the factual  
18 recitation brief, but I want to point out a few facts that I  
19 think are particularly germane to this motion and to Your  
20 Honor's motion.

21 CAIR, as you know, is the nation's largest civil  
22 rights organization. It represents and provides legal  
23 services to Muslims who have been discriminated against and  
24 persecuted against because of their religious beliefs,  
25 because of their national origins. Because of its mission,

1 CAIR, like the Muslim community it represents, has been  
2 subject to profound hatred and vitreal across the country  
3 since the organization's inception and it has been attacked  
4 on numerous occasions by numerous individuals and  
5 organizations.

6 What makes Saroya's defamation particularly  
7 egregious is the fact that she claims to have witnessed and  
8 to have personally observed a series of atrocities as  
9 egregious as sexual abuse of its employees during her  
10 employment that simply never occurred. And because of her  
11 position of authority within the organization, when she  
12 makes these allegations the public at large looks at them  
13 and believes that because she's a person with knowledge of  
14 this organization because she worked there, that she's  
15 describing incidents that she observed; and, therefore, they  
16 are way more likely to believe that what she's saying is  
17 true.

18 Now, Saroya began publishing her false statements  
19 about CAIR on multiple social media platforms and websites  
20 using various forms of her name, her initials, pseudonyms,  
21 almost immediately after her employment ended with CAIR in  
22 May of 2018. And although she began making the publications  
23 on her personal Facebook and blog under her own personal  
24 social media accounts, at some point, perhaps during this  
25 impending lawsuit, she began making statements anonymously

1 through a gmail account. And she admits in her answer, Your  
2 Honor, that she has access to this gmail account and that  
3 she has used it to make some of these statements.

4 She claims in her publications that she has  
5 witnessed CAIR discriminate against its employees, sexually  
6 abuse its employees, and harass its employees. She claims  
7 that she has observed male supervisors regularly yelling at  
8 herself and other female employees. She claims that CAIR  
9 knew of the sexual abuse suffered by 35 separate  
10 individuals; that it did nothing to investigate the 35  
11 separate complaints. And because of that, she in her  
12 publications asks CAIR's donors not to donate. She asks  
13 CAIR's partners not to allow CAIR employees to speak at  
14 different speaking engagements and fund raise, and she asks  
15 reporters to stop reporting on CAIR and its civil rights  
16 activity.

17 Her intent has been clear from the beginning, and  
18 her intent is to destroy CAIR's reputation in the community  
19 and that forms the basis for all of CAIR's claims that are  
20 subjects to the instant motion.

21 With respect to Saroya's statute of limitations  
22 argument, the motion fails summarily because CAIR pleaded at  
23 least 13 different defamatory publications which contained  
24 multiple different false statements of fact that occurred  
25 within the applicable two-year limit. A statute of

1 limitations is certainly proper fodder for a 12(c) motion.  
2 It's the only issue that Saroya addresses that could  
3 constitute grounds by which to grant the 12(c) motion, but  
4 the problem here is that CAIR pleaded a myriad of defamatory  
5 communications that occurred during that time period.

6 So I'm not really sure that I quite understand the  
7 argument, Your Honor, but I think that Saroya is asking Your  
8 Honor to dismiss individual defamatory statements from a  
9 complaint, and she appears to be claiming that because she  
10 published hundreds of statements and because CAIR included  
11 ones outside the statute of limitations to prove her  
12 identity for the anonymous postings, to show malice, to show  
13 her intent to destroy the organization, that she should be  
14 absolved of all liability for statements made within the  
15 SOL.

16 And that argument doesn't make any sense, of  
17 course, and it's hard to imagine a scenario in which it  
18 could be brought because there's no legal mechanism by which  
19 this Court could conceivably strike a certain number of  
20 paragraphs just because the conduct occurred outside the  
21 statute of limitations.

22 The law, of course, permits CAIR to plead facts  
23 showing the context of the communications at issue, the  
24 history and pattern of her malice, and her identity as the  
25 publisher of these statements.

1           So respectfully, Your Honor, we ask that you deny  
2           Saroya's motion on those grounds.

3           Turning to the argument that the defamation counts  
4           and the tortious interference counts were not properly pled,  
5           CAIR submits that it sufficiently identifies Saroya's  
6           defamatory allegations. Minnesota is a notice pleading  
7           state. That was affirmed as recently as 2014 in the *Walsh*  
8           case for defamation. As Your Honor knows, CAIR must  
9           ultimately prove that Saroya made a false and defamatory  
10          statement about CAIR in an unprivileged publication and that  
11          the statement marked CAIR in the community. For the  
12          defamation per se count, the third factor is presumed and it  
13          need not be pleaded.

14          To survive dismissal, we needed to plead three  
15          things: Who made the statements, to whom they were made,  
16          and in what forum. And we've done that. The plaintiff is  
17          not required to plead the effect of defamatory statements,  
18          although we've included them. Instead, we only have to put  
19          Ms. Saroya on notice of the claims against her. Because  
20          Ms. Saroya published hundreds of statements since her  
21          employment terminated, it would have been impossible for  
22          CAIR to plead each and every publication.

23          As it is, Saroya repeatedly complains in her  
24          briefing about the length of CAIR's 200-count complaint. If  
25          CAIR had pled every single publication that she had ever

1 made, our complaint would be thousands of paragraphs long.

2 It would have also been exceedingly redundant to  
3 plead each time Saroya made a false statement because at  
4 some point, as we pleaded, Saroya began just copying and  
5 pasting the same diatribe and sending it out to more and  
6 more individuals.

7 So instead of pleading every single, you know, 200  
8 communications that she sent and every single time there was  
9 a false statement contained therein, CAIR attached or quoted  
10 a series of publications in the complaint that accurately  
11 showed the breadth of her defamatory activity and the  
12 substance of her false factual allegations.

13 And then it pleaded the specific facts, the  
14 specific statements within those publications that were  
15 false. And those statements, Your Honor, I won't go over  
16 all of them, they are outlined on pages 9 and 10 of CAIR's  
17 opposition brief.

18 In addition to pleading the defamatory  
19 publications at issue in the complaint and pleading the  
20 false statements within the complaint, CAIR also of course  
21 pleaded that Saroya made the statements and pleaded the mode  
22 and manner in which she made them and the forums and the  
23 audience who read them.

24 Saroya is properly on notice of the alleged  
25 defamatory communications. To the extent that she seeks

1 clarity on which statements could be submitted to a jury for  
2 ruling, the proper mechanism would be to file a motion in  
3 limine prior to trial, but a 12(c) motion does not provide  
4 grounds for dismissal of individual numbered paragraphs in  
5 the complaint.

6 The next argument that Saroya --

7 THE COURT: Ms. Morgan, can I just interrupt you  
8 there?

9 MS. MORGAN: Yes.

10 THE COURT: The Court hears you and, you know,  
11 your response brief was well done. I think my concern, and  
12 you have just hit it on the nail, is that the appropriate  
13 time to sort out what the defamatory claims allegedly are is  
14 not at the motion in limine stage. That's right before  
15 trial. That's where we talk about evidentiary issues and  
16 the like. That is not. We need to have that sorted out now  
17 so that the discovery can focus on that. And I appreciate  
18 that a complaint can certainly create context and tell a  
19 story and your complaint does that, but it's very hard to  
20 sort out what is actionable and what's not.

21 It's not at all hard to see what you believe is  
22 defamatory, but what is actionable and not actionable is not  
23 clear at all from the face of the complaint. You do make an  
24 effort in your brief to clarify that, but that's still not  
25 in the complaint.

1           What I think the Court needs -- and I appreciate  
2           the magnitude of this undertaking and the number of  
3           publications and the like. But keeping in mind the law  
4           about defamatory opinions not being actionable, claims made  
5           before May 21st of 2019 not being actionable and the like, I  
6           need some sense, I think the parties need some sense, of  
7           what the discovery should focus on. What are the actionable  
8           false statements that you claim occurred here, and it's hard  
9           to sort that out. And, trust me, we can't do that at the  
10          motion in limine stage. Even at the motion for summary  
11          judgment stage some of that can get sorted through.

12                 So help me figure out a way to address this.  
13          Perhaps an amended complaint is the way to do it where you  
14          specifically -- because the defamation complaints that I've  
15          seen in my 20 years on the bench actually specifically  
16          identify the allegedly false facts. It's fine to have in  
17          the context the story, the opinions, the out of statute  
18          stuff. But under Counts I and II, I would like to see  
19          precisely what you believe is verifiable. Not opinion. And  
20          there's so much of that in your complaint. So much general  
21          unrest and opinion. So I need to see more of that.

22                 You know, social media is such a forum for cruelty  
23          and that goes many ways. I'm not blaming anybody for  
24          anything here. But that's not actionable. We really need  
25          to specifically identify verifiable facts that you believe

1 are false.

2 So, Ms. Morgan, with that guidance, what do you  
3 think CAIR would be willing to do here to give this a second  
4 shot, if you would?

5 MS. MORGAN: CAIR would certainly be willing to  
6 amend the complaint, Your Honor, to identify the specific  
7 defamatory communications at issue. We agree that I think  
8 that would help narrow and limit the scope of discovery,  
9 which is a large looming issue in this case as well, Your  
10 Honor.

11 And we did request -- we have not filed for a  
12 motion for leave to amend. We did in our opposition ask for  
13 Your Honor to grant us leave to amend to the extent that  
14 Your Honor was inclined to either grant the motion for  
15 judgment on the pleadings for the defamation or the tortious  
16 interference claim. So CAIR would certainly be willing to  
17 amend its complaint to narrow the issues and identify for  
18 Your Honor the actionable statements of fact which are  
19 contained in the defamatory communications.

20 THE COURT: The amendment, for instance, couldn't  
21 just incorporate the context into the count. I mean, that's  
22 really important because then you're confused about what the  
23 basis of the count is. So it's important to say this is  
24 context. Much of it is outside of the statute. And under  
25 Counts I and II here are the only statements that we

1 believe, one at a time, we believe are false statements of  
2 fact and are actionable.

3 And then I would give Ms. Saroya the chance to  
4 bring another motion, either judgment on the pleadings or  
5 12(b), whatever you believe is appropriate. But now the  
6 Court is left with the task of sorting through this language  
7 and trying to figure out what on earth; and it's concerning  
8 to me, Ms. Morgan, because so much of it is opinion.

9 If you look at some of these cases that the --  
10 that have been cited here, I know just from my personal  
11 experience all the opinions about terrible judges and  
12 terrible politicians online; and none of that, trust me,  
13 unfortunately is actionable. So we have to be really  
14 careful to sort out these general opinions.

15 MS. MORGAN: And I can respond to that, Your  
16 Honor, because I understand what Your Honor is saying there,  
17 and I understand that her statements do contain some  
18 nonactionable opinions.

19 But where this case falls, where some of her  
20 statements differ from all that case law about, you know,  
21 that someone being a bad influence is a nonactionable  
22 opinion, or someone being a terrible judge or a terrible  
23 lawyer is a nonactionable opinion. And really, quite  
24 frankly, all of the cases that Ms. Saroya cited in her brief  
25 are all related to adjective statements, as in they are all

1 related to words used to describe a person or an entity  
2 versus an action.

3 And the cases where the defamatory communications  
4 have been upheld on a motion for summary judgment or a  
5 motion to dismiss are where the person is accusing the  
6 individual or the organization of taking some type of  
7 action. So the ones that we cited where a statement that  
8 someone failed to supervise their child, a statement that  
9 someone misrepresented his background, so statements about  
10 actual incidents that occurred are capable of defamatory  
11 meaning. There's a lot of case law on that as opposed to  
12 statements that are adjectives about someone's personality,  
13 or just hyperbolic rhetoric like saying someone poisoned the  
14 board when no reasonable person could believe that someone  
15 had actually poisoned the board.

16 The reason that Ms. Saroya's statements differ  
17 from those cases is the context in which they are made, and  
18 is her position within the organization, because she is  
19 making clear to her readers that she is this long-term  
20 employee of CAIR at a branch level and at the national  
21 organization. She doesn't use the cautionary language like  
22 "I believe" or "I think" or "I feel" or "in my opinion,"  
23 which is -- is something that this Court can look at as a  
24 factor for this Court's determination; and instead she says  
25 things like "I witnessed," "I observed," "I personally was

1 subjected to."

2 And she talks about actual actions. I mean, she  
3 does claim that CAIR sexually abused its employees. She  
4 does claim that CAIR repeatedly yelled at -- or male  
5 individuals at CAIR repeatedly yelled at female  
6 subordinates. She does claim there are 35 women who have  
7 all alleged that they were sexually abused or harmed by CAIR  
8 in some manner. And all of those particular statements,  
9 Your Honor, would be statements of fact that are actionable  
10 under the case law in Minnesota and in other jurisdictions.

11 So as I understand, Your Honor's desire would be  
12 for us to request leave to amend and then to succinctly  
13 state those in a list form for each specific statement that  
14 we believe is actionable facts that are false and  
15 defamatory.

16 THE COURT: And to be very disciplined about it so  
17 we can focus discovery just on those facts. She doesn't  
18 need to say the words "I believe." I mean, opinions are  
19 opinions and it really has to be verifiable. So there needs  
20 to be something concrete about it, you know, and time and  
21 space with people so that there's some clarity about what  
22 the claim is.

23 And I'll ask Mr. Kerbaugh to weigh in at this  
24 point. I'm sure this isn't exactly the result you were  
25 looking for, but I think it's a journey here to try to get

1 to clarity about this case and right now there's so little.

2 Mr. Kerbaugh, your thoughts.

3 MR. KERBAUGH: Your Honor, it's hard to say  
4 without having seen the complaint. I do have some concerns  
5 with regard to some of the comments that I've just heard  
6 with regard to statute of limitations, for example, and with  
7 some other statements that, you know, I think that there's  
8 likelihood to be a disagreement about whether they actually  
9 constitute facts when we see the other reconstituted  
10 complaint, that we might be back here again. And in the  
11 event that that happens, you know, we're pushing this  
12 litigation further down the road. We're already, you know,  
13 several months into discovery.

14 So that's my big concern. And I think that really  
15 they've had an opportunity to do this. They didn't. You  
16 know, there's authority standing for the proposition that,  
17 you know, a defamation claim can be dismissed with  
18 prejudice. Of course, as Your Honor had indicated, an  
19 amended complaint might not be the result we're seeking. We  
20 would request our dismissal with prejudice of the defamation  
21 claims.

22 But in the event, you know, that there is an  
23 amended complaint, we would have to see what it looked like  
24 to decide, you know, appropriate next steps in terms of  
25 potentially bringing it again before Your Honor.

1 THE COURT: Okay. All right. I think that's how  
2 we should proceed at this point.

3 So for clarity, and for the sake of moving things  
4 ahead, I am going to rule from the bench that the motion is  
5 denied without prejudice and that the plaintiff is permitted  
6 to amend -- I know it's the holidays but we do have to move  
7 this ahead. So I'm going to ask you to do that promptly.  
8 I'll give you two weeks to do that.

9 And I want there to be a lot of -- I want to see a  
10 lot of discipline in that because the -- a lot of these  
11 complaints, although they may be valid, they may be  
12 defamatory, they are not actionable. I mean, we really have  
13 to get down to what's actionable and what's clear.

14 This is especially true of the statute of  
15 limitations. There will be an opportunity to provide the  
16 jury with context, but there can't be any confusion that  
17 statements made outside of the statute are somehow  
18 actionable. So I want to see a lot of discipline to this  
19 amendment; and once that's done, I invite the defense to  
20 make a decision about what you chose to do next. I think  
21 that's the best way to move ahead here.

22 MS. MORGAN: Thank you, Your Honor.

23 THE COURT: All right. Any questions about that  
24 ruling?

25 MS. MORGAN: No, Your Honor.

1 MR. KERBAUGH: No, Your Honor.

2 THE COURT: All right. Very good. I hope to --  
3 this is the kind of case in my magistrate judge days I would  
4 love to bring you all in on a weekend and sort it through,  
5 if you will. But there isn't a weekend and I'm not a  
6 magistrate judge. But other than that, I would encourage  
7 you to seek out some -- a good mediator who can try to detox  
8 some of this and come up with a path forward that's  
9 acceptable to both sides.

10 All right. With that, I wish you a happy holiday  
11 and Court is adjourned.

12 MS. MORGAN: Thank you.

13 MR. KERBAUGH: Thank you, Your Honor.

14 MR. BAUDRY: Thank you, Your Honor.

15 (Court adjourned at 10:14 a.m.)

16 \* \* \*

17 I, Carla R. Bebault, certify that the foregoing is  
18 a correct transcript from the record of proceedings in the  
19 above-entitled matter.

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21

22 Certified by: s/Carla R. Bebault  
23 Carla Bebault, RMR, CRR, FCRR

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